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BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of
Notice of Proposed Rulemaking
on Certification of Screening Companies

Docket No. FAA-1999-6673 — 33

COMMENTS OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

The Air Transport Association (ATA)[1] and the Regional Airline Association (RAA)[2], on behalf of our member airlines, respectfully submit these comments on the Department of Transportation's (DOT) Notice of proposed Rulemaking (NPRM) on Certification of Screening Companies contained in Docket No.: FAA-1999-6673; Notice No. 99-21.

Our comments refer to the primary sections of the proposed rule, which we believe require significant modification and/or additional clarification to prevent adverse operational effects, departures from the fundamental principle of screening company accountability, or financial and economic consequences for both the airline and screening contractor industries.

Subpart B - Security Program, Certificate, and Operations Specifications

Section III.E. Sec. 111.9 – Prohibition Against Interference With Screening Personnel.

ATA and RAA agree that it is important to emphasize the importance to safety and security of protecting screeners from attempts to intimidate them. We support this provision.

Section III.F./111.101 – Performance of Screening.

ATA and RAA oppose the proposal to make the air carriers responsible for forwarding. sensitive security information of any kind to the screening companies. This is an inefficient practice that would only serve to delay or dilute the importance of such material to the detriment

[1] ATA's members are Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International, Federal Express, Hawaiian Airlines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airlines, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways. ATA's associate members are Aeromexico, Air Canada, Canadian Airlines International, KLM Royal Dutch Airlines, and Mexicana Airlines.

[2] The Regional Airline Association represents sixty short-haul scheduled airlines. RAA's member airlines transported 97 percent of the passengers carried by U.S. regional airlines in 1999.

of aviation security. Further, as the proposed rule is designed to make screening companies a full partner in the security program, there is no justification for requiring theses companies to receive this information from a third party. In order to foster this partnership, the FAA should fully engage the screening companies by communicating vital aviation security information directly with the affected parties.

Section III.G./111.103; 111.105; and 111.107 – Security Programs.

ATA and RAA members oppose the establishment of a separate Screening Standard Security Program (SSSP) which would contain requirements for security screening. This recommendation is counter to our joint goals of better standardization to improve regulatory compliance. We believe the security requirements should be contained in one controlling document to assure uniformity, efficiency, and consistency. We recommend the Air Carrier Standard Security Program (ACSSP) be modified to include a specific reference section for al security screening regulations. This section could then be provided to the screening companies. ATA and RAA do not believe the practice of maintaining multiple security programs provides sufficient (if any) benefits to overcome the inefficiencies of the plan.

We oppose the proposal which would require the carriers to "make available to the FA A" copies of individual screening company security programs with whom they contract. This regulatory requirement should reside directly with the screening companies seeking/obtaining certification. Inclusion of air carriers into this process diminishes the goal of this proposed ru e to make screening companies directly accountable for the integrity and conduct of their securi ty program. We recommend the FAA clarify its proposal by clearly defining the functions of oversight and removing confusing overlaps in responsibility.

Section III.H./111.109 – Screening Company Certificate.

We request the FAA to carefully review the proposal to make the final rule effective 60 (sixty) days after final publication. The FAA should take into account the possible inability of numerous affected parties, many of which are small business entities, to meet such a deadline given the cost and complexity of the proposed certification regulations. For smaller entities particularly, the new regulatory regime will create significant demands on their resources that should be recognized in determining the effective date of the rule.

Section III.I. Secs. 111.1; 111.13; and 111.15 – Operations Specifications.

ATA and RAA are concerned that requiring screening companies to include the locati ons at which they are screening in their FAA-approved operations specifications could have operational consequences. Air carriers, especially regional airlines, often begin service at a new city with minimum advance notice. These airlines and the communities they serve, should nc t be disadvantaged by delaying the commencement of this service because of the ministerial process of approving amendments to operations specifications. We believe that screening companies should only be required to notify the FAA of the locations at which a company is conducting screening – not to include it in the operations specifications. This would allow airlines to respond quickly to "real world" market and competitive forces.

Section III. J./l 11.117 – Oversight by Air Carriers, Foreign Air Carriers, or Indirect Air Carrie: s.

ATA and RAA agree that air carrier oversight is important to ensuring civil aviation security and regulatory compliance. We note that this section requires air carriers to be provided copies of enforcement actions within three (3) days of receipt. The industry believes that a seven (7) day requirement would permit normal business practices to dictate the means of such notification.

Subpart C - Operations

Section III.N./111.205 – Employment Standards for Screening Personnel.

ATA and RAA member carriers believe it is inappropriate for the Federal Aviation Administration to interject itself into commercial aspects of the industry with regard to customer service issues. Air carriers and contract service providers are fully committed to non-discriminatory practices in the conduct of our every-day business. All references to these requirements should be struck from the proposed rule.

Section III.R. Sec. 111.213 – Training and Knowledge of Persons with Screening-related Duties.

ATA and RAA strongly support FAA's proposal to create a performance-based training environment where comprehension of information, rather than completion of hourly training standards, is required. The industry has consistently supported the important premise that comprehension and performance should be the key elements of security training programs. Training programs based primarily on "hours of training" do not necessarily translate to greater awareness nor improved performance in the conduct of such security duties.

Section III.S./111.215 – Training Tests: Requirements.

We would request that the FAA work in partnership with the air carrier and security screening companies in developing the proposed training testing programs outlined in this section. Such a partnership will permit all parties to fully utilize their security expertise and applicable company experiences in designing such a program.

The industry is opposed to the proposed requirement that an air carrier employee monitor be required to be present during the conduct of such testing. We believe that this oversight responsibility best resides with the FAA. Such FAA presence will serve to reiterate its direct relationship with the screening companies and highlight the importance of accountability and performance.

ATA and RAA member airlines fully support the goal of facilitating mobility of screener personnel. However, we are concerned about FAA's proposal to require a screening company to transfer its original screener records to the carrier for which it was conducting screening. Airlines frequently enter and exit markets, depending on the competitive environment. Retention of these records by the air carrier, which may have left the market, does not appear to be the most effective method to increase mobility for screeners. We suggest that the records be provided to the local FAA Civil Aviation Security Field Office or unit for retention.

Section III.W./111.223 – Automated Performance Measurement and Standards.

ATA and RAA member carriers strongly support the development and deployment of threat image projection (TIP) systems. It is vital that any requirement for the use of TIP be contingent on deployment of TIP at all airport locations, utilizing federal funding provided by

the Congress as the result of the recommendations of the 1996 White House Commission on Aviation Safety and Security.

The industry is currently unable to respond in detail to the issues associated with the utilization and measurement of screener performance utilizing TIP since no such information is currently available. Nor at the present time do we have data pertaining to validation results, testing protocols or performance measurement standards. TIP was developed as a training tool to provide screeners with the construction of a variety of realistic images for threat identification and detection purposes. The FAA should use this important tool as a means to develop and refine screener skills-not for the purpose of measuring regulatory compliance. The industry also believes that all data collected through the TIP program should be restricted under 14CFR 191.5 regulations.

Section IV.E./108.201(i), and (k); 109.203(b), (c), and (d); and 129.25 (l), (m), and (n) – Responsibilities of Carriers and Screening Companies.

The industry does not support the proposed requirements regarding the availability and maintenance of each of the screening companies security programs. To interject the air carriers into this process in the manner proscribed would negate the long-sought goal of making the air carriers and screening companies equal entities with regard to federal regulatory compliance. Specifically, we believe the execution and maintenance of the program belong with the regulated screening company. The industry's oversight responsibility must be to assure the goals of the program are being met. Therefore, as previously stated, we are seeking clarification or modification of the program to reflect clear lines of accountability without overlap.

Section IV.F. Secs. 108.211(1) and 129.25(o) – Public Notification Regarding Additional Security Measures.

ATA and RAA member airlines strongly oppose FAA's proposal to require that each air carrier notify the public by posting signs at affected locations if FAA believes that security operations are "slower" than normal. FAA's role is to mandate security measures and conduct inspections to ensure compliance with those standards, not mandate levels of customer service. Further, we are concerned that such public notification requirements might have unintended consequences by giving the false perception that security may be compromised at these locations. This public notice process could provide unwanted incentives for persons committed to terrorist acts against civil aviation to target such locations. We urge the FAA to delete this provision.

Section IV.I./108.229; 109.205; and 129.25(p) – Monitoring of Screener Training Tests.

As previously stated, ATA and RAA members see no benefit in diluting the direct responsibility which screening companies should assume under the proposed rule. Most importantly it does not add to the security baseline. This requirement also will impose additional and unjustified increases in manpower expenses on the air carriers to provide such monitors. Again, such monitoring should be conducted by FAA representatives.

Compliance and Enforcement Issues

ATA and RAA agree that certification of screening companies will improve civil aviation security by making screening companies directly accountable to FAA for failures to carry out their screening duties. We also agree that air carriers should continue to be accountable for

failure to carry out duties primarily assigned to them, such as providing the proper equipment and conducting specific oversight functions. However, we strongly disagree with FAA's proposal to take enforcement action against both the screening company and the air carrier, even in those cases where the airline has exercised reasonable oversight and conducted periodic audits as required in the ACSSP. We do not believe there is any justification for this action. Fundamental fairness demands that enforcement action only be taken against the party that is genuinely responsible for an infraction. Further, this proposal seems in conflict with the objective of the regulation – to make the screening companies fully responsible to the FAA for its security program. In the event that the FAA believes that enforcement action is necessary, the agency should determine whether the screening company or the air carrier is responsible and take action against that one entity.

Conclusion

The industry has long-sought and fully supports the overall goals of the proposed rulemaking on the certification of screening companies. We believe that the modifications and changes to the proposed rulemaking which we are seeking will bring greater clarity and definition to the shared responsibilities between the industry, government and the security screening companies. ATA and RAA urge the Federal Aviation Administration to accept these recommended changes and to move promptly to enact a final rule which will meet our common goal of enhancing the security screening baseline.

Respectfully submitted,

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